



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**WAGGONER CARR  
ATTORNEY GENERAL**

**July 28, 1965**

**Honorable Robert S. Calvert  
Comptroller of Public Accounts  
Austin, Texas**

**Opinion No. C- 472**

**Re: Construction of the term  
"commercial hotel, motel,  
or other commercial lodg-  
ing establishment" within  
the meaning of Section 15  
of Article V of the General  
Appropriation Act of the  
59th Legislature.**

**Dear Mr. Calvert:**

**Your request for an opinion on the above subject matter  
asks the following questions, in view of the provisions of  
paragraph a of Section 15 of the General Appropriation Act  
of the 59th Legislature:**

**"Please advise what rate of per diem  
should be allowed under the following con-  
ditions?**

**"1. Military property auditors of the  
Adjutant General's Department while travel-  
ing to Houston, San Antonio, Dallas and El  
Paso stay at the respective military bases -  
Ellington Air Force Base, Lackland Air Force  
Base, Grand Prairie Naval Air Station and  
Fort Bliss. These auditors are charged a  
small rate per night by these installations  
for their lodging.**

**"2. State employees quite often in  
traveling to educational and eleemosynary  
institutions in the performance of their  
duties obtain lodging at the institutions  
visited, for which a charge is made for  
quarters.**

"Please define for me the term commercial hotel, motel and other commercial lodging establishments."

Paragraph a of Section 15 of Article V of the General Appropriation Act of the 59th Legislature provides:

"Rates of allowance. Each employee traveling on State business inside the boundaries of the State of Texas shall be allowed, in lieu of actual expenses incurred for meals and lodging, a flat per diem rate of not to exceed twelve dollars (\$12) provided there is attached to his expense account when submitted a "Paid" bill or receipt from a commercial hotel, motel, or other commercial lodging establishment for his lodging, but provided further that if such receipt is not submitted, the flat per diem rate shall not exceed seven dollars (\$7)."

Article 4596, Revised Civil Statutes of Texas, 1925, defines a hotel or inn as "a place where the business is to furnish food and lodging or either, to all who apply and pay therefor [emphasis added]." We have been unable to find any definition of the term "commercial lodging establishment" in the statutes or Appropriation Act. However, in Merchants Red Book Company v. State, 132 Tex. 470, 125 S.W.2d 279 (1939), the Supreme Court considered whether the Merchants Red Book Company constituted a "commercial agency" or "commercial reporting credit agency" within the purview of Article 7061, Revised Civil Statutes of Texas, 1925, which article provided for taxes upon gross receipts of certain businesses therein named. In that case, it was held:

" . . . It appears with reasonable certainty that the terms 'mercantile agencies' and 'commercial agencies,' being regarded as synonymous, have for a long time had a definite meaning. See 40 Corpus Juris, p. 636. In the case of City of Brookfield v. Kitchen, 163 Mo. 546, 63 S.W. 825, 826, the Supreme Court of Missouri, speaking of 'commercial or mercantile agencies,' said: 'Such agencies are defined to be establishments which make a business of collecting information relating to the credit, character, responsibility, and reputation of merchants for the purpose of furnishing the information to subscribers, - e.g. R. G. Dun & Co. Agency, Bradstreet Company, etc.

5 Am. & Eng. Enc. Law (1st Ed.) p. 280;  
Web.Int.Dict.'

"Corpus Juris gives the following definition: 'A commercial or mercantile agency may be defined as a person, firm, or corporation engaged in the business of collecting information as to the financial standing, ability, and credit of persons engaged in business, and reporting the same to subscribers or customers applying and paying therefor.' . . . [emphasis by the Court]

"Technically speaking, it may be that the Legislature in the original enactment of Article 7061 had in mind just such agencies. We are inclined to think, however, that the question should not be determined solely from the fact that in one instance the information furnished pertains to those engaged in business, while in the other it pertains only to customers or purchasers. It is altogether probable that a corporation or individual could engage in the business of collecting at their own expense information concerning the credit rating of individual purchasers and customers and sell this information to retail merchants, in the form of a red book or by reports, or both, and build up a large and profitable enterprise. Such a business would then undoubtedly take on the character of a 'commercial' credit reporting agency, such as R.G. Dun & Co. and other similar agencies undoubtedly are. Obviously, such agencies come under the statute. We think, however, the situation here is distinctly different. This enterprise is undoubtedly so related to the conduct of the business of retail merchants as to really be an indispensable part of same, or an important incident thereto. . . . Disregarding technical rules of ownership, it may appropriately be said that this business is owned to as large extent by the subscribers as by the Chiltons. Its creation and existence has been brought about by the cooperation of the merchants themselves. We do not think that the fact that the Chiltons are paid rather substantially for their services makes this a 'commercial' enterprise, in the sense of

being one organized and operated for profit to those who are its sole promoters. It is more properly speaking a cooperative enterprise between the Merchants Association and those who act in the capacity of managers, and for this reason we do not think the Legislature intended to tax a business of this kind."

In view of the foregoing, it is our opinion that the phrase "commercial hotel, motel, or other commercial lodging establishment" refers to those persons, firms, corporations, associations or establishments, engaged in the business of furnishing lodging to the public generally for pay, and does not include military installations of either the State or Federal government, nor does it include educational institutions or eleemosynary institutions of the State.

In answer to your first question you are therefore advised that when employees of the Adjutant General's Department, while traveling on official business, obtain lodging at the respective military bases, such employees are entitled to receive \$7 per diem for traveling on State business inside the boundaries of the State, rather than \$12 per diem. In answer to your second question, you are advised that when State employees, while traveling on official business, obtain lodging at educational or eleemosynary institutions of the State, such employees are entitled to receive \$7 per diem for traveling inside the boundaries of the State on State business, rather than \$12 per diem.

#### S U M M A R Y

The phrase "commercial hotel, motel, or other commercial lodging establishment" used in subdivision a of Section 15 of Article V of the General Appropriation Act of the 59th Legislature, relating to the rates of allowance for State employees traveling on State business, refers to those persons, firms, corporations, associations or establishments engaged in the business of furnishing lodging to the public generally for pay, and does not

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include military installations of either  
the State or Federal government nor educa-  
tional or eleemosynary institutions of  
the State.

Yours very truly,

WAGGONER CARR  
Attorney General

By   
John Reeves  
Assistant

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APPROVED:

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